

REMARKS

Claims 1-19 have been cancelled and replaced by new claims 20-38. This method of amendment was chosen for editorial simplicity. Except for new claim 38, the claims are merely reformatted to remove tables objected to by the Examiner. New claim 38 recites the primary operational steps of original claim 1. No new matter has been added.

The specification is amended to provide the complete address of the IDA set forth at page 6, lines 30-31.

I. Enablement

Claims 1-19 stand rejected under 35 USC § 119, first paragraph, as allegedly being based upon non-enabling disclosure. The Examiner asserts that the microbial consortium that is the “crux of the invention” is not adequately enabled.

The Examiner’s position is incorrect. The microbial consortium used in the invention has been deposited with the Institute of Microbial Technology, Chandigarh under the terms and conditions of the Budapest Treaty. Such deposit serves as adequate written description and enabling disclosure of the consortium itself. *See, e.g. Enzo Biochem. Inc. v. Gen-Probe, Inc.* 63 USPQ2d 1609 (Fed. Cir. 1002).

The Institute of Microbial Technology in Chandigarh, listed as the location of the original deposit in the original specification page 6, line 31, is the home of the Microbial Type Culture Collection & Gene Bank. The Microbial Type Culture Collection & Gene Bank (MTCC) is listed as approved International Depository Authority under the Budapest Treaty in India. (*See*, Budapest Treaty list of IDA’s, available at <http://www.wipo.int/export/sites/www/treaties/en/registration/budapest/pdf/idalist.pdf>). Thus the microbial consortium has been deposited and is identified in such a manner as to enable the presently claimed invention.

Furthermore, Applicants suggest that the disclosure teaches one skilled in the art how to develop anaerobic, thermophilic, halophilic and barophilic microbial consortia. (*See e.g.*, PCT/IN 2004/000208 cited at page 11, lines 16-30).

Accordingly, the instant rejection should be withdrawn.

II. §112 Second Paragraph

Claims 1-19 are rejected under 35 USC § 112, second paragraph as allegedly indefinite. The Examiner asserts that the recitation of “MTCC” in claims 1 and 17 fails to distinctly point out the subject matter. The Examiner also rejects claims 1 and 17 as being unclear because they use an alleged Trademark. Applicants respectfully disagree.

The Examiner has confused an accession number from an IDA with a trademark. The accession number identifying the deposit of the the microbial consortium recited in the claims is sufficiently definite terminology. The instant rejection should therefore be withdrawn.

III. Claim Format

Applicants respectfully submit amended claims which omit the tables and better conform with USPTO practices.

IV. Multiply Dependent Claims

Claims 6 and 7 were objected to as being in an improper form, specifically, in multiple dependent form. In light of the Examiner’s objection, Applicants have amended the claims so they are no longer objectionable.

V. Declaration of Deposit

On a final note, Applicants recognize a declaration stating that a deposit has been made, including the deposit date, the accession number, the name and address of the IDA and a description of the deposited material, and furthermore stating that all restrictions on access to the deposit will be lifted upon grant of a patent may be required. Applicants will provide this declaration in a timely manner in a supplement to this paper.


Applicants submit that the presently pending claims are clearly written and claim patentable subject matter. The favorable actions of withdrawal of the standing rejections and allowance of the pending claims are respectfully requested.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Dr. Mark J. Nuell Reg. No. 36,623 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

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Respectfully submitted,

By 

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